



Kentucky Law Journal

Volume 8 | Issue 1

Article 5

1920

Recent Cases

Kentucky Law Journal

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Recommended Citation

Kentucky Law Journal (1920) "Recent Cases," *Kentucky Law Journal*: Vol. 8 : Iss. 1 , Article 5.

Available at: <https://uknowledge.uky.edu/klj/vol8/iss1/5>

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Kentucky Law Journal

Published four times a year by the students of the College of Law of the University of Kentucky. Issued January, March, May and November.

Subscription Price, \$1.50 per annum.

Forty cents per number.

F. A. PURYEAR..... Editor

H. C. BRYAN..... Assistant Editor

RECENT CASES

RECENT INTERESTING KENTUCKY DECISIONS

Contracts—Purchase and Storing of Hemp and Reimbursement.—By a contract between plaintiff and defendant under which defendant agreed to purchase hemp for plaintiff as its agent, it was stipulated that the hemp should be stored in defendant's warehouse, defendant's commission to cover all expenses of conducting the business. The warehouse burned and defendant stored salvaged hemp in the country, paying storage, for which he seeks reimbursement. Held, that defendant is entitled to reimbursement for unforeseen and extraordinary expenses necessarily incurred in caring for plaintiff's hemp. *Gay v. American Trading Company*, 185 Ky. 305.

Mines and Minerals—Oil Lease—Forfeiture.—An oil lease providing that the lessee shall drill a well on the leased premises within a year, or thereafter pay a small sum annually as rental, which should be accepted in performance of the lessee's contract under the lease until a well was drilled, could not be forfeited by the lessor on account of the failure of the lessee to drill a well within a year or thereafter when the lessor was accepting the rentals in satisfaction of the contract until the lessor notified the lessee that he would not accept the rentals in satisfaction of the contract and demanded that a well should be drilled. *Plumber v. Southern Oil Company*, 185 Ky. 243.

Intoxicating Liquors—Misrepresentation of Brewery—Recovery of Damages Against.—Plaintiff Owens, in good faith bought, for resale in his store, a soft drink labeled "Non-intoxicating" in reliance upon the assurance of the brewery that it was non-intoxicating. He was arrested, convicted and fined for selling the alleged soft drink when in fact the beverage was highly intoxicating. The defendant brewery by contract had agreed to save him harmless from all damage that might result from prosecution for violation of the law in handling same. Held, That plaintiff had a good cause of action against the defendant brewing company. *Owens v. Henderson Brewing Company, et al.*, 185 Ky. 477.

Mines and Minerals—Deeds—Construction and Limitation.—One Gearheart executed and delivered a deed to Laws stating that he conveyed "all the mineral right and coal privileges and rights of way to and from said mineral and coal privileges, also the right to search for all undiscovered minerals and coal in a certain tract of land" Grantee never exercised his rights under the deed for a period of more than forty years. Gearheart then conveyed to plaintiff, Scott, who brought action against Laws to quiet his title to the minerals and alleged that defendant had lost his title by the Statute of Limitations. Held, that there was a severance of the mineral estate from the surface estate, and that the owner of the minerals did not lose his right or his possession by any length of non-user, and the owner of a surface could acquire no title by the Statute of Limitations to the minerals by his exclusive and continued occupancy of the surface merely. Also held, that the deed passed the title to all minerals, including oil and gas. *Scott v. Laws*, 185 Ky. 440.

Forfeiture of Bail—Soldier in U. S. Army.—Bodine and Briggs were under an indictment and were released on bail furnished by appellants and others. They made application to local draft board to be placed in Class 1A Selective Service which was granted. It appears that they would not otherwise have been placed in this class. Before time for trial they were inducted into service and stationed at a camp within forty miles of the place of trial. The Commonwealth Attorney applied for and obtained permission for a leave of absence for the defendants to attend the trial but they refused to

accept same. Held, that this was sufficient grounds for the forfeiture of the bail bonds. *Briggs, Sr., et al. v. Commonwealth*, 185 Ky. 340.

Highways—State Aid Roads—How Funds May be Used.—Ballard county voted three hundred thousand dollars bond issue for the building of roads, one hundred and fifty thousand dollars of which was to be used in conjunction with a like amount to be furnished by the state for the purpose of building state aid roads, in which construction, inter-county-seat roads were to have the preference. The state did not at once furnish its part of the money and the county advanced the whole three hundred thousand dollars in the building of inter-county-seat roads. An action was brought to compel the county to use funds which were repaid by the state on this contract in the building or completion of inter-county-seat state aid roads, instead of applying the money so repaid to the general county road funds. The court held that this was a loan of one hundred and fifty thousand dollars to the state out of the county road fund and when it was repaid it was still a part of the general road fund and that the county would not be compelled to use it for state aid roads. *Short, et al. v. Fiscal Court of Ballard county*, 185 Ky. 650.

War-Time Prohibition Law Upheld.—On October 10, 1919, the Kentucky Distilleries and Warehouse Company brought suit in the Kentucky court to restrain a collector of internal revenue from interfering with the withdrawal of whisky from bond. A similar suit was brought in New York at a later date. The petition in both cases alleged that the war-time prohibition act was void. Both cases were taken to the Supreme Court of the United States. The four contentions upon which the attack was based were:

1. That the act was void because it violated the Fifth Amendment by taking property without due compensation.
2. That it was void at the time of the bringing of these suits because the war emergency had passed.
3. It was abrogated or repealed by the Eighteenth Amendment which gave a year's time for the disposal of liquor.
4. That it had expired by its own terms before the bringing of these suits, because it extended only to the end of demobilization which has ended.

The court held that it did not violate the Fifth Amendment because the government had the right to prohibit the manufacture or sale of liquor as a war-time measure without compensating those affected and that seven months and nine days was a reasonable time within which to dispose of all liquors in bonded warehouses.

As to the second allegation the court held that the mere cessation of hostilities did not end the war emergency but that support of the armed forces during demobilization was part of the war emergency.

The third contention was held unsound by the court because if it were true that the year of grace mentioned in the Eighteenth Amendment nullified legislative prohibition during that period that all state prohibition laws would also have been nullified.

As to the fourth contention, the court held that as the law extended prohibition until the conclusion of the war that in the absence of specific provisions to the contrary, the period of war has been held to extend to the ratification of the treaty of peace or the proclamation of peace.

It is said that there are but three opportunities for the wets to succeed in having liquor withdrawn from bond. These three possibilities are: Ratification of the peace treaty by the senate and proclamation by the President that the war is at an end: A resolution by congress declaring this country at peace with Germany and its acceptance by the President; and repeal of the war-time prohibition act by congress. There is small probability, apparently, of any of these steps being taken.

